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July 3, 2009

Via e-mail

Alan Soloman
Project Manager
Siting, Transmission and Environmental Protection Division
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814

**Re: GWF Tracy Combined Cycle Power Plant 08-AFC-07 (the "Plant")
Visual Impacts Analysis in the Preliminary Staff Assessment ("PSA")**

Dear Mr. Soloman:

Our firm represents Tracy Hills, LLC, a California limited liability company and the developer of the Tracy Hills development project ("Tracy Hills"). Tracy Hills has been approved for development by the City of Tracy as a Specific Plan with single-family residential neighborhoods, office parks and other urban land uses. The PSA identifies Tracy Hills as a probable future project that must be considered in the analysis of cumulative impacts under CEQA Guidelines § 15130 (see PSA p. 4.5-21). This letter documents our client's concern regarding the potential for cumulatively considerable visual impacts from the Plant on Tracy Hills, and insists that feasible mitigation be required to address those impacts.

Visual Impacts

Tracy Hills includes two land use zones that are within sighting distance of the Plant: a light industrial "M-1" zone and a medium-density residential "MDR" zone (these are depicted on AFC Figure 5.6-4a). Unlike the discussion of land use conflicts, where Tracy Hills is identified as having a potential cumulative impact, the analysis of cumulative visual impacts in the PSA does not account for the land uses planned within Tracy Hills (see PSA p. 4.12-13). Tracy Hills is not identified as part of the visual resources setting, even though the City limit line is shown in Figure 5.6-4a. The Key Observation Points (KOPS) used in the visual impacts analysis do not represent views from Tracy Hills (see AFC Figure 5.13-1). KOP 2 is located 1½ miles from the Plant, and represents the view seen by motorists travelling on I-580. KOP 3 is located 1 mile from the Plant and represents the view of several residences oriented away from the Plant. By contrast, future residences in Tracy Hills' MDR zone will be located approximately 3,500 feet closer to the Plant than KOP 2, or about half the distance of KOP 2. Light industrial land uses in Tracy Hills will be approximately 1,500 feet closer than KOP 3.

As it neglects to include any discussion of cumulative visual impacts on Tracy Hills, the analysis of visual resources in the PSA fails to fully evaluate the Plant's impacts on visual resources. Many of the homes and business that are built in Tracy Hills will have permanent, unobstructed views of the Plant at a closer distance than the KOPS analyzed in the PSA. Visual impacts on these land uses are not comparable to the relatively few houses oriented away from the Plant, or the more distant views of passing motorists, that were analyzed in the PSA. Consequently, Energy Commission staff must revise the assessment of visual resources to include a discussion of the Plant's cumulative visual impacts on land uses planned in Tracy Hills, which we believe to be cumulatively considerable under CEQA.

Feasible Mitigation

To address the visual impacts of the Plant, the PSA recommends condition of certification VIS-4, which requires the applicant to maintain landscaping as specified in the Staff Assessment for the Tracy Peaker Plant. As illustrated in the photo simulations for the Plant, no landscaping is proposed along the Delta Mendota Canal. It is our understanding that the Department of Fish and Game ("DFG") restricts the planting of certain trees along the canal because some trees afford raptors the opportunity to prey on the San Joaquin Kit fox. While such restrictions may narrow the options available to screen the Plant, Energy Commission staff has made no effort to explore alternative mitigation measures. Staff must determine whether there are any tree or plant varieties that could be planted along the canal, or in another location, that would provide visual screening of the Plant without threatening the Kit fox. We are willing to assist the Energy Commission and the applicant to address the visual impacts on Tracy Hills in a manner that is acceptable to DFG.

In conclusion, the PSA for the Plant must be revised to analyze the cumulative visual impacts of the Plant on the land uses planned in Tracy Hills. We believe feasible mitigation is available to address those impacts and must be included in the Final Staff Assessment. Please contact me if you have any questions or would like to discuss this matter in more detail.

Very truly yours,

HEFNER, STARK & MAROIS, LLP

By 

Timothy D. Taron

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